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Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and associated individuals and entities

Note verbale dated 26 March 2004 from the Permanent Mission of San Marino to the United Nations addressed to the Chairman of the Committee

The Permanent Mission of the Republic of San Marino to the United Nations presents its compliments to the Chairman of the Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and associated individuals and entities and has the honour to refer to its letter dated 11 February 2004 and to attach herewith San Marino's report pursuant to resolutions 1526 (2004) and 1455 (2003) (see annex).

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Annex to the note verbale dated 26 March 2004 from the Permanent Mission of San Marino to the United Nations addressed to the Chairman of the Committee*

Report of San Marino to the Security Council Committee established pursuant to resolution 1267 (1999) in accordance with paragraph 22 of resolution 1526 (2004) and paragraph 6 of resolution 1455 (2003).

I. INTRODUCTION

San Marino submits the following report pursuant to paragraph 22 of resolution 1526 (2004) and paragraph 6 of resolution 1455 (2003).

San Marino submitted other reports which are relevant in this context, in particular to the CTC: Therefore, with regard to specific areas reference will be made to these reports:

- S/2001/1292
- S/2002/786
- S/2003/841

For a better understanding of the following replies, some general information on San Marino is first presented.

San Marino relies on an open and well-diversified economy. With 45 operating financial intermediaries, the banking and financial system is a major sector of the San Marino economy, but very limited in size if compared to other financial centres. The regulatory and supervisory framework is in line with the relevant international standards and practices. San Marino is not an offshore financial centre.

San Marino is a member of the MONEYVAL Committee of the Council of Europe, a FATF-Style Regional Body, and as such committed to mutual evaluations in anti-money laundering matters. The country was evaluated for the second time in 2003. San Marino responded to FATF Eight Special Recommendations and Questionnaires on Terrorist Financing. San Marino is also a Member of the IMF and World Bank, which have taken a leading role over the last few years in combating terrorist financing and money laundering. The IMF Article IV Consultations are scheduled in April-May this year.

By reason of its geographical location, San Marino has ever since maintained close bilateral relations and cooperation with Italy, notably through a friendship and good neighbourliness agreement and a currency and customs union, subsequently followed by a cooperation and customs union agreement with the European Union. Though San Marino is not a member of the EU, it adopted the euro as its legal tender through an appropriate currency union agreement.

* Additional documentation is on file with the Secretariat and is available for consultation.

The small territorial size of the country (61 square kilometres) facilitates widespread and accurate controls and patrolling by law enforcement agents (*Gendarmeria*, Civil Police and *Guardia di Rocca*, described in the S/2002/786 Report to the CTC), especially on the borders, and because San Marino has never experienced terrorist acts domestically - and this remains highly unlikely - there has never been the practical need for establishing a special anti-terrorism agency or service. Moreover, domestic law provisions regulating residence and stay permits place a number of restrictions on the presence of foreigners in the country (see Report S/2002/786). This means that it is virtually impossible to stay in San Marino for a prolonged period of time without the authorities knowing that. Terrorists are neither harboured nor recruited in San Marino.

This nonetheless, San Marino has been prompt in taking appropriate measures to join the international fight against terrorism and terrorist financing. The relevant international instruments were signed and ratified, important steps were taken to increase and enhance protection of the domestic economic and financial system (for more detailed information see Reports S/2002/786 and S/2003/841), and most recently a Law was passed criminalizing terrorism and terrorist financing and supplementing the 1998 anti-money laundering law (Law No. 28 of 26 February 2004 – copy is attached in Italian and English). The CTC had been informed of a Draft Law on anti-terrorism as early as 2002. However, a series of government crises and reshuffles inevitably caused a number of issues to be postponed or delayed, including the approval of this Law.

1. Please provide a description of activities, if any, by Usama Bin Laden, Al-Qaida, the Taliban and their associates in your country, the threat they pose to the country and the region, as well as likely trends.

There is neither evidence nor immediate threat of such activities by Usama Bin Laden, Al-Qaida, the Taliban and their associates in San Marino. As stated in the introduction, the small size of the country makes it impossible for terrorists to hide out, recruit or be recruited.

II. Consolidated List

2. How has the 1267 Committee's List been incorporated within your legal system and your administrative structure, including financial supervision, police, immigration control, customs and consular authorities?

For the reasons explained above, the list has been implemented basically to protect the domestic financial sector on the one hand, and, on the other, to freeze funds and other financial assets and resources of individuals and entities indicated in the List. Resolution 1267 (1999) was formally received by the Currency Authority (Central Bank of the Republic of San Marino) on 18 July 2000, Resolution 1333 (2000) on 8 October 2001, Resolution 1373 (2001) on 5 November 2001 under Congress of State's Decision No. 1 "Provisions to Monitor and Counter the Financing of International Terrorism", the latter containing again an express reference to resolutions 1267 and 1333. The Supervision Department of the Central Bank of the Republic of San Marino (formerly Office of Banking Supervision) has issued since September 2001 a number of formal Communications addressed to banking and financial institutions transmitting the updates of the Committee's List under

resolution 1267 (1999), 1390 (2002) and 1455 (2003). By means of the Communication dated 9 June 2003 banking and financial institutions were also expressly requested to regularly check the Consolidated List made available on the Security Council Committee's website.

Importantly, the San Marino Supervision Department formally received and communicated to banking and financial institutions all relevant EU Regulations adopting the various UN resolutions, and related lists, basically identical to the Committee's List. More specifically: Council Regulation (EC) No. 337/2000 of 14 February 2000 (adopting resolution 1267), Council Regulation (EC) No. 467/2001 of 6 March 2001 (adopting resolution 1333), Council Regulation (EC) No. 881/2002 of 27 May 2002 (adopting resolution 1390), as well as all relevant amendments and adjustments to such Regulations made by the EU Commission. The latest of such formal communications by the Supervision Department of the Central Bank dates 23 March 2004.

3. Have you encountered any problems with implementation with regard to the names and identifying information as currently included in the List? If so, please describe these problems.

Where the data available are incomplete (e.g. relevant first or family names are missing or misspelled, the place and/or date of birth is not indicated) technical difficulties arise with the identification of a person or entity. A further difficulty certainly derives from the confusion that many of the aliases listed generate.

4. Have your authorities identified inside your territory any designated individuals or entities? If so, please outline the actions that have been taken.

No such designated individuals and entities have ever been identified inside the territory of San Marino.

5. Please submit to the Committee, to the extent possible, the names of individuals or entities associated with Usama Bin Laden or members of the Taliban or Al-Qaida that have not been included in the List, unless to do so would compromise investigations or enforcement actions.

No such individuals and entities not included in the List have ever been identified inside the territory of San Marino.

6. Have any listed individuals or entities brought a lawsuit or engaged in legal proceedings against your authorities for inclusion in the List? Please specify and elaborate, as appropriate.

The answer is no.

7. Have you identified any of the listed individuals as nationals or residents of your country? Do your authorities have any relevant information about them not already included in the List? If so, please provide this information to the Committee as well as similar information on listed entities, as available.

The answer is no.

8. According to your national legislation, if any, please describe any measures you have taken to prevent entities and individuals from recruiting or supporting Al-Qaida members in carrying out activities inside your country, and to prevent individuals from participating in Al-Qaida training camps established in your territory or in another country.

For the reasons described in the introduction, no terrorists are either harboured or recruited in San Marino.

III. Financial and Economic Assets Freeze

9. Please describe briefly:

• the domestic legal basis to implement the asset freeze required by the resolutions above;

• any impediments under your domestic law in this context and steps taken to address them.

The current legal basis is Law No. 28 of 26 February 2004 "Provisions on Anti-Terrorism, Anti-Money Laundering and Anti-Insider Trading". Article 1 of said Law criminalizes, by introducing Article 337 *bis* in the Criminal Code, the promotion, setting up, organization, direction and financing of, or participation in terrorist acts and activities, while Article 16 stipulates that "Within operations of an investigative nature aimed at identifying and suppressing the felonies referred to in Articles 199 *bis* [money laundering], 207 [usury] and 337 *bis* [terrorism] of the Criminal Code and at acquiring relevant evidence, the Supervision Department of the Central Bank of the Republic of San Marino may, in case of serious and converging circumstantial evidence, temporarily block or freeze the capitals or other financial resources or assets, as well as any account or business relationship held or maintained with the San Marino banking and financial intermediaries [...]". Prior to this Law, the Anti-Money Laundering Law No. 123/1998 applied, based on an "all-crimes" approach, with terrorism and terrorist financing being included among predicate offences, though not yet criminalized up until early this year. For further clarification in this regard, reference is made to the S/2002/786 and S/2003/841 Reports. It is worth recalling, however, that with special regard to the possibility of freezing funds suspected of being directly or indirectly related to terrorist financing, Congress Decision No.1 of 5 November 2001 (mentioned under point 2 of this Report) applied.

There are no impediments under the domestic legislation.

10. Please describe any structures or mechanisms in place within your Government to identify and investigate Usama bin Laden, Al-Qaida or Taliban-related financial networks, or those who provide support to them or individuals, groups, undertakings and entities associated with them within your jurisdiction. Please indicate, as appropriate, how your efforts are coordinated nationally, regionally and/or internationally.

The Anti-Money Laundering Law No. 123/1998 stipulates, as a restriction on the use of cash, that all transactions exceeding EUR 15,500 have to be conducted through a bank or a licensed financial intermediary. The same Law clearly provides for customer identification, record maintenance and suspicious transaction reporting obligations by banking and financial institutions, as well as for penalties in case of non compliance with said Law and with the implementing provisions issued by the Supervision Department. Under the new Law No. 28 of 26 February 2004, such obligations have been extended to other non-financial activities and professionals (e.g. real estate agencies, lawyers, notaries, etc.), thus incorporating the 2nd EU Directive on money laundering, in respect of whom the Supervision Department will have to issue special implementing provisions.

Due diligence and know-your-customer rules are those generally applied to combat money laundering, in accordance with international standards, and are extensively addressed in two Circulars issued by the Supervision Department (formerly Office of Banking Supervision): Circular No. 26 of 27 January 1999 and Circular No. 33 of 12 February 2003. For a description of their contents, reference is made to the S/2002/786 and S/2003/841 Reports and copies of the Circulars sent to the CTC.

With regard to structures or mechanisms to identify and investigate Usama bin Laden, Al-Qaida or Taliban-related financial networks, or those who provide support to them or individuals, groups, undertakings and entities associated with them, the Supervision Department regularly circulates the EU Council and Commission Regulations (as stated under point 2 above) instituting certain specific restrictions on individuals and entities linked to Usama bin Laden, the Al-Qaida network and the Taliban.

Article 17 of Law No. 28/2004 extends the powers of the Supervision Department, in that the Supervision Department may rely, subject to the prior authorization of the judge, on the cooperation of the Police Forces while conducting financial investigations. Art. 15 of Law No. 28/2004 provides for the use of special investigation techniques by police agents in investigations aimed at countering money laundering, usury and terrorism, the use of such techniques subject to being authorized by the Court.

As Financial Intelligence Unit (since 1996), the Supervision Department closely cooperates internationally with other FIUs under Memoranda of Understanding generally based on the Egmont Group Model. Procedures have been started to apply for membership in the Egmont Group.

It is worth recalling that last year, Law No. 86 of 27 June 2003 provided for a functional integration between the Office of Banking Supervision and the Central Bank (for detailed information reference is made to the S/2003/841 Report). Under said Law, the new structure has allowed the former OBS to

draw on the human and technological resources and organisational capacities of the Central Bank, with some of its employees having been assigned to the Supervision Department.

With regard to international cooperation in legal matters, San Marino provides assistance under mutual legal assistance treaties. In the absence of such a treaty or other formal agreement, the judicial authorities are nonetheless able to provide assistance in criminal matters to other states on the basis of letters rogatory. For greater details reference is made to the S/2003/841 Report to the CTC.

11. Please convey the steps banks and/or other financial institutions are required to take to locate and identify assets attributable to, or for the benefit of, Usama bin Laden or members of Al-Qaida or the Taliban, or associated entities or individuals. Please describe any "due diligence" or "know your customer" requirements. Please indicate how these requirements are enforced, including the names and activities of agencies responsible for oversight.

Please refer to the information provided under point 10 above.

12. Resolution 1455 (2003) calls on Member States to provide "a comprehensive summary of frozen assets of listed individuals and entities." Please provide a list of the assets that have been frozen in accordance with this resolution. This list should also include assets frozen pursuant to resolutions 1267 (1999), 1333 (2000) and 1390 (2002). Please include, to the extent possible, in each listing the following information:

• identification(s) of the person or entities whose assets have been frozen;

• a description of the nature of the assets frozen (i.e., bank deposits, securities, business assets, precious commodities, works of art, real estate property, and other assets);

• the value of assets frozen.

No assets have been frozen pursuant to resolutions 1455 (2003), 1390 (2002), 1333 (2000) and 1267 (1999). We wish to recall, as stated in the introduction, that the San Marino banking and financial system is very limited in size.

13. Please indicate whether you have released pursuant to resolution 1452 (2002) any funds, financial assets or economic assets that had previously been frozen as being related to Usama Bin Laden or members of the Al-Qaida or the Taliban or associated individuals or entities. If so, please provide reasons, amounts unfrozen or released and dates.

Not applicable, because no such assets have been frozen.

14. Pursuant to resolutions 1455 (2003), 1390 (2002), 1333 (2000) and 1267 (1999), States are to ensure that no funds, financial assets or economic resources are made available, directly or indirectly, to listed individuals or entities or for their benefit, by nationals or by any persons within their territory. Please indicate the domestic legal basis, including a brief description of laws, regulations and/or procedures in place in your country to control the movements of such funds or assets to designated individuals and entities. This section should include a description of:

• The methodology, if any, used to inform banks and other financial institutions of the restrictions placed upon individuals or entities listed by the Committee, or who have otherwise been identified as members or associates of Al-Qaida or the Taliban. This section should include an indication of the types of institutions informed and the methods used.

As previously described, the San Marino banking and financial institutions are informed by the Central Bank, through its Supervision Department, by means of circulars, standard letters and communications. This method is quite effective given the limited number of institutions operating in San Marino, as stated in the introduction.

• Required bank-reporting procedures, if any, including the use of Suspicious Transaction Reports (STR), and how such reports are reviewed and evaluated.

Such requirement, applying to all banking and financial institutions, is stated in the Anti-Money Laundering Law No. 123/1998, while the relevant implementing provisions are basically contained in two Circulars issued by the Supervision Department. Circular No. 26 of 27 January 1999 and Circular No. 33 of 12 February 2003 set forth the criteria to identify and report suspicious and/or unusual transactions. Circular No. 33 also imposes an obligation to collect, besides the customer's personal data (e.g. from an official ID document) also information on his business/professional activity, and to periodically check this information against documentation other than that required for entering a business relationships (for example utility billing). Financial intermediaries have to analyse the transactions conducted by customers on the basis of their economic/asset capacity, by making a critical comparison between the objective features of transactions (such as type, amount and nature) and the customer's background (economic capacity, business activity, other information). The same Circular, moreover, explicitly provides for a compliance officer in charge of relations with the Supervision Department, as well as for ongoing staff training.

The Supervision Department analyzes these STRs/UTRs and, if well-grounded, forwards them to the Court for judicial investigation or prosecution. For greater details, reference is made to the S/2002/786 and S/2003/841 Reports sent to the CTC.

• Requirements, if any, placed on financial institutions other than banks to provide STR, and how such reports are reviewed and evaluated.

Non-bank financial institutions are subject to the same requirements as banks. Please, refer to the what explained above.

• Restrictions or regulations, if any, placed on the movement of precious commodities such as gold, diamonds and other related items.

Under Law No. 41 of 25 April 1996 the buying and selling of unrefined gold is a responsibility of the Central Bank. Economic agents are allowed to buy bar gold in any form for the production of goods in San Marino subject to the prior authorisation of the Central Bank which is also responsible for supervision of the use and destination of imported unrefined gold. The same principle was reaffirmed in Law No. 86 of 27 June 2003 (already mentioned under point 10 above), whereby the functions of the Central Bank include, among other things, the sole right –with possibility of delegating other banks or branches operating on the territory – to conduct transactions in bullion and precious metals.

Any business activity involving the trade in, including the export and import of, gold (for industrial or investment purposes) and precious stones and objects – subject to the authorization and supervision of the Central Bank referred to above – must be duly authorized and licensed under the relevant laws and regulations.

Under Art. 8 of the new Law No. 28/2004 such business operators are subject to same customer identification, record maintenance and reporting requirements as financial intermediaries.

• Restrictions or regulations, if any, applicable to alternate remittance systems such as -- or similar to -- "hawala", as well as on charities, cultural and other non-profit organizations engaged in the collection and disbursement of funds for social or charitable purposes.

No alternative remittance systems exist in San Marino. Non-profit organizations mainly include cultural and sports associations. They are limited in number and generally rely on government contributions.

IV. Travel Ban

15. Please provide an outline of the legislative and/or administrative measures, if any, taken to implement the travel ban.

No special measures have been taken in this regard for the reasons outlined in the introduction. San Marino is not a transit country and issues no visas. Anyone wishing to reach San Marino must necessarily travel across Italy. Therefore, anyone holding a tourist visa to enter Italy is equally allowed to enter and stay in San Marino for tourist purposes. Such person is required to duly and promptly inform the *Gendarmeria* of his intention to stay in the country. Failing such tourist visa, a foreigner is only allowed to stay in San Marino (in all cases for a period not exceeding 90 days) if there has been a formal invitation by a San Marino national and if he or she is in possession of a double transit visa issued by the competent consular authority in Italy or in a Schengen country. Hotels and other accommodation facilities are required to identify their customers and report regularly to the *Gendarmeria*. Lastly, as stated in the introduction, the San Marino law provisions on the granting of residence and stay permits strictly limit the presence of foreigners in the country.

16. Have you included the names of the listed individuals in your national "stop list" or border checkpoint list? Please briefly outline steps taken and any problems encountered.

There is no national "stop list" for the reasons described under point 15 above.

17. How often do you transmit the updated List to your border control authorities? Do you possess the capability of searching List data using electronic means at all your entry points?

The San Marino police forces have access, by virtue of bilateral arrangements, to the database of the Italian Ministry of the Interior. For further information on police and border control authorities, please refer to the S/2002/786 Report to the CTC.

18. Have you stopped any of the listed individuals at any of your border points or while transiting your territory? If so, please provide additional information, as appropriate.

No such individuals have ever been stopped in San Marino.

19. Please provide an outline of the measures, if any, taken to incorporate the List in the reference database of your Consular offices. Have your visa-issuing authorities identified any visa applicant whose name appears on the List?

For the reasons explained under point 15 above San Marino has no visa-issuing authorities.

V. Arms Embargo

20. What measures, if any, do you now have in place to prevent the acquisition of conventional arms and weapons of mass destruction (WMD) by Usama bin Laden, members of Al-Qaida organization and the Taliban and other individuals, groups, undertakings and entities associated with them? What kind of export control do you have in place to prevent the above targets from obtaining the items and technology necessary for weapons development and production?

As stated in the introduction, San Marino is in a customs union with the European Union and therefore import and export controls are implemented by the EU customs authorities in accordance with the relevant EU regulations and procedures.

The embargoes adopted by the United Nations with Resolutions No. 1267 of 15 October 1999, and No. 1333 of 19 December 2000 were formally received by the Currency Authority on 18 July 2000 and 8 October 2001 respectively, in the framework of the suppression of the financing of terrorism.

Conventional arms and WMD are neither imported nor exported. Import and export of such arms is not authorised in San Marino.

21. What measures, if any, have you adopted to criminalize the violation of the arms embargo directed at Usama bin Laden, members of Al-Qaida organization and the Taliban and other individuals, groups, undertakings and entities associated with them?

For the reasons explained under point 20 above, no domestic measures have been adopted. However, Articles 251 and 252 of the Criminal Code punish, by terms of imprisonment and arrest, the unauthorized making, circulation, introduction in the national territory, or carrying of weapons, as well as failure to duly inform the authorities thereof.

22. Please describe how your arms/arms broker licensing system, if any, can prevent Usama bin Laden, members of Al-Qaida organization and the Taliban and other individuals, groups, undertakings and entities associated with them from obtaining items under the established arms embargo.

Law No. 40 of 13 March 1991 stipulates that any sale and purchase of firearms, including hunting and sport shooting weapons and accessories, is subject to the prior authorization of the *Gendarmeria* (the Military Police). The seller and buyer, duly and correctly identified, as well as the specifications of the weapon must always be indicated. Violations of the provisions set forth in said Law are punishable under Art. 251 of the Criminal Code by terms of imprisonment or arrest. Licenses to carry weapons and ammunition are only issued to individuals.

23. Do you have any safeguards that the weapons and ammunition produced within your country will not be diverted/used by Usama bin Laden, members of Al-Qaida organization and the Taliban and other individuals, groups, undertakings and entities associated?

San Marino has no arms industry and therefore no production of weapons or ammunition domestically.

VI. Assistance and conclusion

24. Would your State be willing or able to provide assistance to other States to help them implement the measures contained in the above-mentioned resolutions? If so, please provide additional details or proposals.

For the reasons outlined in the introduction, the only area in which San Marino would be able to provide assistance is the suppression of terrorist financing.

25. Please identify areas, if any, of any incomplete implementation of the Taliban/Al-Qaida sanctions regime, and where you believe specific assistance or capacity building would improve your ability to implement the above sanctions regime.

No such areas have been identified.

26. Please include any additional information you believe pertinent.

For further information, please refer to the Reports and annexes sent to the CTC.